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Date: August 18, 2008 Name: Richard E. Stanley, Jr. Signature: /Richard E. Stanley, Jr./ Reg. No. 45,662

Our Case No. 8627-431
Client Ref. No. PA-5498-RFB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
James B. Hunt)
Serial No.: 10/815,105) Examiner: Natalie R. Pous
Filing Date: March 31, 2004) Group Art Unit No.: 3731
For: STENT-GRAFT WITH GRAFT TO) Confirmation No. 6585
GRAFT ATTACHMENT)

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the final Office Action dated March 17, 2008, Applicant submits this Appeal Brief in support of the appeal of the final rejection of claims 1-27 and 36. It is respectfully submitted that the final rejection of claims 1-27 and 36 should be reversed for the following reasons.

I. Real Party in Interest

The real party in interest in the present appeal is Cook Incorporated, the assignee of the entire right, title and interest in the application.

II. Related Appeals and Interferences

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned or Cook Inc. "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal."

III. Status of Claims

Claims 1-27 and 36 are currently pending and have been rejected.

Claims 28-35 have been cancelled.

The rejections of claims 1-27 and 36 are being appealed in this appeal.

IV. Status of Amendments

All claim amendments have been considered by the Examiner.

V. Summary of Claimed Subject Matter

The claims are directed to a stent-graft with a first graft layer (18, 20) disposed along the luminal surface of the stent (12) and a second graft layer (18, 20) disposed along the abluminal surface of the stent (12). The graft layers (18, 20) are secured to each other through first and second radial openings (16) through the stent (12) at a first attached area (22) and a second attached area (22) where the graft layers (18, 20) are secured together. First and second unattached margins (24) between the attached areas (22) and the edges of the radial openings (16) are oriented along the same side of each of the attached areas (22), thereby allowing the graft layers (18, 20) to move relative to the stent (12). Claim 36 also recites that the unattached margins (24) extend peripherally all around the attached areas (22). The elements of independent claims 1 and 36 are recited below with citations to the preferred embodiments described in the specification.

1. A stent-graft assembly, comprising:

at least one unitary stent structure (12) comprising a luminal surface and an abluminal surface and having at least a first radial opening (16) and a second radial opening (16), said first and second radial openings (16) being axially and circumferentially defined by a plurality of struts (14), said first and second radial openings (16) extending through said stent structure (12) between said luminal surface and said abluminal surface, wherein said first and second radial openings (16) are spaced apart along a first direction;

a first graft layer (18, 20) disposed along at least a portion of said luminal surface of said stent structure (12) thereby fully covering luminal sides of said first and second radial openings (16);

a second graft layer (18, 20) disposed along at least a portion of said abluminal surface of said stent structure (12) thereby fully covering abluminal sides of said first and second radial openings (16);

a first attached area (22) securing said first graft layer (18, 20) and said second graft layer (18, 20) together through a portion of said first radial opening (16), wherein a first unattached margin (24) in which said first and second graft layers (18, 20) are not secured to each other is disposed between said first attached area (22) and an edge of said first radial opening (16);

a second attached area (22) securing said first graft layer (18, 20) and said second graft layer (18, 20) together through a portion of said second radial opening (16), wherein a second unattached margin (24) in which said first and second graft layers (18, 20) are not secured to each other is disposed between said second attached area (22) and an edge of said second radial opening (16); and

wherein said first and second unattached margins (24) are oriented along said first direction and on a same side of said first and second attached areas (22), thereby allowing said first and second graft layers (18, 20) to move along said first direction relative to said stent (12).

36. A stent-graft assembly, comprising:

a stent structure (12) comprising a luminal surface and an abluminal surface and having at least a first radial opening (16) and a second radial opening (16), said first and second radial openings (16) extending through said stent structure (12) between said luminal surface and said abluminal surface, wherein said first and second radial openings (16) are spaced apart along a first direction;

a first graft layer (18, 20) disposed along at least a portion of said luminal surface of said stent structure (12) thereby fully covering luminal sides of said first and second radial openings (16);

a second graft layer (18, 20) disposed along at least a portion of said abluminal surface of said stent structure (12) thereby fully covering abluminal sides of said first and second radial openings (16);

a first attached area (22) securing said first graft layer (18, 20) and said second graft layer (18, 20) together through a portion of said first radial opening (16), wherein a first unattached margin (24) in which said first and second graft layers (18, 20) are not secured to each other is disposed between said first attached area (22) and an edge of said first radial opening (16);

a second attached area (22) securing said first graft layer (18, 20) and said second graft layer (18, 20) together through a portion of said second radial opening (16), wherein a second unattached margin (24) in which said first and second graft layers (18, 20) are not secured to each other is disposed between said second attached area (22) and an edge of said second radial opening (16);

wherein said first and second unattached margins (24) are oriented along said first direction and on a same side of said first and second attached areas (22), thereby allowing said first and second graft layers (18, 20) to move along said first direction relative to said stent (12); and

wherein said first unattached margin (24) extends peripherally all around said first attached area (22) and said second unattached margin (24) extends peripherally all around said second attached area (22).

VI. Ground of Rejection to be Reviewed on Appeal

- A. The Examiner has rejected claims 1-11, 13-14 and 16-19 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. (U.S. Patent No. 5,843,166) in view of Jacobs et al. (U.S. Patent No. 6,387,123).
- B. The Examiner has also rejected claims 15 and 24-27 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Buirge et al. (U.S. Patent Pub. No. 2001/0034550).
- C. The Examiner has also rejected claim 12 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Lombardi et al. (U.S. Patent No. 6,579,314).
- D. The Examiner has also rejected claims 20-23 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. in view of Buirge et al. in view of Lombardi.
- E. The Examiner has also rejected claim 36 as being anticipated under 35 U.S.C. § 102(b) by Lentz et al.

VII. Argument

- A. Claims 1-11, 13-14 and 16-19 are not obvious over Lentz et al. in view of Jacobs et al.

Applicant seeks review of the Examiner's rejection of claims 1-11, 13-14 and 16-19 as being unpatentable under 35 U.S.C. § 103(a) over Lentz et al. in view of Jacobs et al. The ultimate issue before the Board is whether Lentz et al. and Jacobs et al. disclose all of the limitations of Applicant's claims and whether there is an apparent reason to combine Lentz et al. with Jacobs et al. Applicant respectfully submits that the

Examiner has not set forth a proper prima facie case of obviousness, and therefore, the Examiner's rejection should be reversed.

Claim 1 requires a unitary stent structure with struts that define a first radial opening and a second radial opening both axially and circumferentially. A first and second graft layer cover opposite sides of the stent structure. The graft layers are secured to each other through the radial openings at a first attached area (through the first radial opening) and a second attached area (through the second radial opening). Unattached margins are provided between the attached areas and edges of the radial openings. The unattached margins are required to be oriented along a first direction and are on the same side of each of the attached areas so that the graft layers can move relative to the stent along the first direction.

Referring to claim 1, Lentz et al. fails to disclose a unitary stent structure with first and second radial openings that are axially and circumferentially defined by a plurality of struts. The Examiner appears to admit this fact. (3/17/08 Office Action at 7). However, the Examiner argues that it would have been obvious to combine Lentz et al. with Jacobs et al. because Jacobs et al. discloses a unitary stent structure with radial openings defined axially and circumferentially by struts. Specifically, the Examiner argues that "Jacobs teaches 'the struts enable the tube to expand radially when subjected to the appropriate radially directed forces.'" (3/17/08 Office Action at 7).

The Examiner's argument, however, fails to provide sufficient reasoning to explain why one of ordinary skill in the art would have been motivated to substitute the plurality of stents 28 disclosed in Lentz et al. with the unitary stent structure 12 disclosed in Jacobs et al. Indeed, the motivation that the Examiner has cited (that "the struts enable the tube to expand radially when subjected to the appropriate radially directed forces") is not even relevant to the invention—i.e., how to attach two graft layers to a stent structure. In fact, neither Jacobs et al. nor Lentz et al. disclose how to attach a first and second graft layer to a unitary stent structure.

Moreover, there is no evidence that the combination of Lentz et al. and Jacobs et al. would even work to achieve Applicant's claimed invention. In particular, the spaces (30a', 30b') that the Examiner relies upon in Lentz et al. wrap around the entire circumference of the stent-graft to allow the stents (28) to move within the pockets

(30a', 30b'). (Col. 3, lines 43-45; col. 5, lines 7-12; col. 5, lines 41-46). Likewise, the attached areas disclosed in Lentz et al. wrap all the way around the circumference of the stent-graft. (Col. 5, lines 41-46). Thus, even if one of skill were to attempt to substitute the unitary stent structure from Jacobs et al. for the plurality of stents used in Lentz et al., the attached area of Lentz et al. would overlap and adhere to the longitudinal portions of the Jacobs et al. stent structure. As a result, the proposed combination would not permit the graft layers “to move along said first direction relative to said stent” as required by claim 1.

Claims 2, 8, 10, 18 further require the attached area to be smaller than the unattached margin. The Examiner has provided no substantive analysis of this claim limitation or the prior art and merely concludes that this limitation is disclosed by Lentz et al. (See, e.g., 3/17/08 Office Action at 7 – claim 2). However, as shown in Figure 3 of Lentz et al., the attached area between the tubes (12, 22) is larger than the unattached margin between the attached area and the edge of the stent (28).

Claim 3 further requires that the first direction, in which the graft layers are moveable relative to the stent, is in the axial direction. Claim 4 further requires that the first direction is circumferential. Claim 6 further requires that the first direction is axial and the second direction, in which relative movement is restricted, is circumferential. The Examiner has provided no substantive analysis of these claim limitations or the prior art and merely concludes that these limitations are disclosed by Lentz et al. (3/17/08 Office Action at 7-8). However, as explained above, if Lentz et al. were combined with Jacobs et al., the attached area of Lentz et al. would overlap and adhere to the longitudinal portions of the Jacobs et al. stent structure and would prevent both axial and circumferential movement between the graft layers and the stent.

Claim 5 further requires the attached areas to be adjacent to opposite sides of the struts to restrict movement of the stent in a second direction. The Examiner has provided no substantive analysis of this claim limitation or the prior art and merely concludes that this limitation is disclosed by Lentz et al. (3/17/08 Office Action at 7). However, Lentz et al. fails to state anywhere in the specification or show in the drawings that relative movement is restricted in one direction. Instead, Lentz et al. merely states

that the stents (28) are moveable within the pockets (30a). (Col. 3, lines 43-45; col. 5, lines 7-12; col. 5, lines 41-46).

Claim 7 further requires that the unattached margins extend peripherally all around the attached areas. The Examiner has provided no substantive analysis of this claim limitation or the prior art and merely concludes that this limitation is disclosed by Lentz et al. (3/17/08 Office Action at 8). However, as explained above, the attached areas disclosed in Lentz et al. wrap all the way around the circumference of the stent-graft. (Col. 5, lines 41-46). The Examiner has provided no citation to the specification or drawings of Lentz et al. to support the position that this feature is disclosed in Lentz et al.

Claim 9 requires third and fourth unattached margins between the attached areas and the edges of the radial openings to allow relative movement between the graft layers and the stent in a second direction. The Examiner's analysis of this claim limitation includes the conclusion that "there is sufficient space in the unattached margins for the stent structure to move both longitudinally and circumferentially." (3/17/08 Office Action at 8). However, the Examiner's analysis is contradictory. As noted above, the Examiner's rejection is premised upon substituting the unitary stent structure of Jacobs et al. for the plurality of stents used in Lentz et al. Thus, the Examiner should be comparing whether there would be longitudinal and circumferential movement between the graft layers and the stent when the graft layers of Lentz et al. are combined with the stent structure of Jacobs et al. However, as explained above, if Lentz et al. were combined with Jacobs et al., the attached area of Lentz et al. would overlap and adhere to the longitudinal portions of the Jacobs et al. stent structure and would prevent both axial and circumferential movement between the graft layers and the stent.

B. Claims 15 and 24-27 are not obvious over Lentz et al. in view of Jacobs et al. in view of Buirge et al.

Claims 15 and 24-27 depend from claim 1. As explained above, Lentz et al. and Jacobs et al. do not disclose all of the limitations of claim 1, and there is no apparent reason to combine Lentz et al. and Jacobs et al. to achieve Applicant's claimed

invention. Therefore, claims 15 and 24-27 are also allowable for the same reasons provided above in section VII(A).

C. Claim 12 is not obvious over Lentz et al. in view of Jacobs et al. in view of Lombardi et al.

Claim 12 depends from claim 1. As explained above, Lentz et al. and Jacobs et al. do not disclose all of the limitations of claim 1, and there is no apparent reason to combine Lentz et al. and Jacobs et al. to achieve Applicant's claimed invention. Therefore, claim 12 is also allowable for the same reasons provided above in section VII(A).

D. Claims 20-23 are not obvious under Lentz et al. in view of Jacobs et al. in view of Buirge et al. in view of Lombardi.

Claims 20-23 depend from claim 1. As explained above, Lentz et al. and Jacobs et al. do not disclose all of the limitations of claim 1, and there is no apparent reason to combine Lentz et al. and Jacobs et al. to achieve Applicant's claimed invention. Therefore, claims 20-23 are also allowable for the same reasons provided above in section VII(A).

E. Claim 36 is not anticipated by Lentz et al.

Applicant also seeks review of the Examiner's rejection of claim 36 as being anticipated under 35 U.S.C. § 102(b) by Lentz et al. Thus, the ultimate issue before the Board is whether Lentz et al. discloses each and every limitation of Applicant's claim. Applicant respectfully submits that Lentz et al. does not disclose all of the limitations of claim 36, and therefore, the Examiner's rejection should be reversed.

Like claim 1, claim 36 requires first and second graft layers that cover opposite sides of the stent structure. The graft layers are secured to each other through radial openings at a first attached area (through the first radial opening) and a second attached area (through the second radial opening). Unattached margins are provided between the attached areas and edges of the radial openings. The unattached margins are required to be oriented along a first direction and are on the same side of each of

the attached areas so that the graft layers are moveable relative to the stent along the first direction. In addition, the unattached margins are required to extend peripherally all around the attached areas.

As shown in Figure 1 of Applicant's specification, the attached areas 22 are spaced away from the struts 14 and do not abut against any portion of the stent structure. Thus, the unattached margins 24 (which are disposed between the attached areas 22 and the edges of the radial openings 16 where the graft layers 18, 20 are not secured to each other) extend peripherally all around each of the attached areas 22.

The Examiner has provided no substantive analysis of these claim limitations or the prior art and merely concludes that these limitations are disclosed by Lentz et al. (3/17/08 Office Action at 5). In particular, the Examiner states that "said first unattached margin (30a') extends peripherally all around said first attached area and said second unattached margin (30b') extends peripherally all around said second attached area (it is noted that these are inherent features as defined by the attached and unattached areas)." While Applicant agrees that 30a' and 30b' in Lentz et al. are unattached margins, the Examiner has provided no citation to the specification or drawings of Lentz et al. to support the position that the unattached margins (30a', 30b') extend peripherally all around each of the attached areas. As explained above, the attached areas in Lentz et al. wrap all the way around the circumference of the stent-graft. (Col. 5, lines 41-46). Thus, in Lentz et al., each unattached margin (30a', 30b') extends along only one side of an attached area and does not extend around the entire periphery of the attached area.

VIII. Conclusion

Applicant respectfully submits that claims 1-27 and 36 are allowable over the prior art of record. As argued above, Applicant submits that Lentz et al. and Jacobs et al. fail to disclose all of the elements of at least claims 1, 2, 3, 5, 7, 8, 9, 10 and 18. Moreover, there is no apparent reason to combine Lentz et al. and Jacobs et al. in the manner that the Examiner has proposed in order to achieve the claimed inventions. Further, Applicant submits that Lentz et al. fails to disclose each and every limitation of claim 36. Accordingly, Applicant requests that the Examiner's rejection of claims 1-27

and 36 be reversed and Applicant's application be allowed as presented.

Respectfully submitted,

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Claims Appendix

1. (previously presented) A stent-graft assembly, comprising:

at least one unitary stent structure comprising a luminal surface and an abluminal surface and having at least a first radial opening and a second radial opening, said first and second radial openings being axially and circumferentially defined by a plurality of struts, said first and second radial openings extending through said stent structure between said luminal surface and said abluminal surface, wherein said first and second radial openings are spaced apart along a first direction;

a first graft layer disposed along at least a portion of said luminal surface of said stent structure thereby fully covering luminal sides of said first and second radial openings;

a second graft layer disposed along at least a portion of said abluminal surface of said stent structure thereby fully covering abluminal sides of said first and second radial openings;

a first attached area securing said first graft layer and said second graft layer together through a portion of said first radial opening, wherein a first unattached margin in which said first and second graft layers are not secured to each other is disposed between said first attached area and an edge of said first radial opening;

a second attached area securing said first graft layer and said second graft layer together through a portion of said second radial opening, wherein a second unattached margin in which said first and second graft layers are not secured to each other is disposed between said second attached area and an edge of said second radial opening; and

wherein said first and second unattached margins are oriented along said first direction and on a same side of said first and second attached areas, thereby allowing said first and second graft layers to move along said first direction relative to said stent.

2. (original) The stent-graft assembly according to claim 1, wherein a size of said first attached area is less than a size of said first unattached margin and a size of said second attached area is less than a size of said second unattached margin.

3. (original) The stent-graft assembly according to claim 1, wherein said first direction is axial.

4. (original) The stent-graft assembly according to claim 1, wherein said first direction is circumferential.

5. (previously presented) The stent-graft assembly according to claim 1, wherein said first attached area is positioned adjacent another edge of said first radial opening and said second attached area is positioned adjacent another edge of said second radial opening, said first and second attached areas thereby being disposed on opposite sides of said struts, whereby said first and second graft layers are restricted from moving along a second direction relative to said stent.

6. (original) The stent-graft assembly according to claim 5, wherein said first direction is axial and said second direction is circumferential.

7. (previously presented) The stent-graft assembly according to claim 1, wherein said first unattached margin extends peripherally all around said first attached area and said second unattached margin extends peripherally all around said second attached area.

8. (original) The stent-graft assembly according to claim 7, wherein a size of said first attached area is less than a size of said first unattached margin and a size of said second attached area is less than a size of said second unattached margin.

9. (original) The stent-graft assembly according to claim 1, wherein:
a third unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said first attached area and an edge of said
first radial opening;

a fourth unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said second attached area and an edge of
said second radial opening; and

said third and fourth unattached margins are oriented along a second direction,
thereby allowing said first and second graft layers to move along said second direction
relative to said stent, said second direction being different than said first direction.

10. (original) The stent-graft assembly according to claim 9, wherein a size of
said first attached area is less than a size of said third unattached margin and a size of
said second attached area is less than a size of said fourth unattached margin.

11. (original) The stent-graft assembly according to claim 1, wherein said first
graft layer covers substantially all of said luminal surface of said stent structure and said
second graft layer covers substantially all of said abluminal surface of said stent
structure.

12. (original) The stent-graft assembly according to claim 1, wherein said first
and second attached areas are attached using sutures.

13. (original) The stent-graft assembly according to claim 1, wherein said first
and second attached areas are attached by thermal bonding.

14. (original) The stent-graft assembly according to claim 1, wherein said first
and second graft layers comprise a synthetic polymer.

15. (original) The stent-graft assembly according to claim 1, wherein first and
second graft layers comprise small intestine submucosa.

16. (original) The stent-graft assembly according to claim 1, wherein said first and second attached areas are attached by thermal bonding; and said first and second graft layers comprise a synthetic polymer.

17. (original) The stent-graft assembly according to claim 16, wherein:

a third unattached margin whereby said first and second graft layers are not secured to each other is disposed between said first attached area and an edge of said first radial opening;

a fourth unattached margin whereby said first and second graft layers are not secured to each other is disposed between said second attached area and an edge of said second radial opening; and

said third and fourth unattached margins are oriented along a second direction, thereby allowing said first and second graft layers to move along said second direction relative to said stent, said second direction being different than said first direction.

18. (original) The stent-graft assembly according to claim 17, wherein a size of said first attached area is less than a size of said first unattached margin and a size of said third unattached margin and a size of said second attached area is less than a size of said second unattached margin and a size of said fourth unattached margin.

19. (original) The stent-graft assembly according to claim 18, wherein said first graft layer covers substantially all of said luminal surface of said stent structure and said second graft layer covers substantially all of said abluminal surface of said stent structure.

20. (original) The stent-graft assembly according to claim 17, wherein first and second graft layers comprise small intestine submucosa; and said first and second attached areas are attached using sutures.

21. (original) The stent-graft assembly according to claim 20, wherein:
a third unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said first attached area and an edge of said
first radial opening;

a fourth unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said second attached area and an edge of
said second radial opening; and

said third and fourth unattached margins are oriented along a second direction,
thereby allowing said first and second graft layers to move along said second direction
relative to said stent, said second direction being different than said first direction.

22. (original) The stent-graft assembly according to claim 21, wherein a size
of said first attached area is less than a size of said first unattached margin and a size
of said third unattached margin and a size of said second attached area is less than a
size of said second unattached margin and a size of said fourth unattached margin.

23. (original) The stent-graft assembly according to claim 22, wherein said
first graft layer covers substantially all of said luminal surface of said stent structure and
said second graft layer covers substantially all of said abluminal surface of said stent
structure.

24. (original) The stent-graft assembly according to claim 17, wherein first
and second graft layers comprise small intestine submucosa; and said first and second
attached areas are attached by thermal bonding.

25. (original) The stent-graft assembly according to claim 24, wherein:
a third unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said first attached area and an edge of said
first radial opening;

a fourth unattached margin whereby said first and second graft layers are not
secured to each other is disposed between said second attached area and an edge of
said second radial opening; and

said third and fourth unattached margins are oriented along a second direction,
thereby allowing said first and second graft layers to move along said second direction
relative to said stent, said second direction being different than said first direction.

26. (original) The stent-graft assembly according to claim 25, wherein a size
of said first attached area is less than a size of said first unattached margin and a size
of said third unattached margin and a size of said second attached area is less than a
size of said second unattached margin and a size of said fourth unattached margin.

27. (original) The stent-graft assembly according to claim 26, wherein said
first graft layer covers substantially all of said luminal surface of said stent structure and
said second graft layer covers substantially all of said abluminal surface of said stent
structure.

28-35. (cancelled).

36. (previously presented) A stent-graft assembly, comprising:

a stent structure comprising a luminal surface and an abluminal surface and having at least a first radial opening and a second radial opening, said first and second radial openings extending through said stent structure between said luminal surface and said abluminal surface, wherein said first and second radial openings are spaced apart along a first direction;

a first graft layer disposed along at least a portion of said luminal surface of said stent structure thereby fully covering luminal sides of said first and second radial openings;

a second graft layer disposed along at least a portion of said abluminal surface of said stent structure thereby fully covering abluminal sides of said first and second radial openings;

a first attached area securing said first graft layer and said second graft layer together through a portion of said first radial opening, wherein a first unattached margin in which said first and second graft layers are not secured to each other is disposed between said first attached area and an edge of said first radial opening;

a second attached area securing said first graft layer and said second graft layer together through a portion of said second radial opening, wherein a second unattached margin in which said first and second graft layers are not secured to each other is disposed between said second attached area and an edge of said second radial opening;

wherein said first and second unattached margins are oriented along said first direction and on a same side of said first and second attached areas, thereby allowing said first and second graft layers to move along said first direction relative to said stent; and

wherein said first unattached margin extends peripherally all around said first attached area and said second unattached margin extends peripherally all around said second attached area.

Evidence Appendix

None.

Related Proceedings Appendix

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned or Cook Inc. "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal." As such, there are no "decisions rendered by a court or the Board in any proceeding" to submit.